

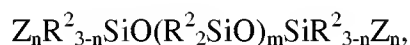
**REMARKS**

Claims 1-20 are pending in the subject application. The specification of the subject application is currently amended to ensure consistent reference numerals/letters are used throughout the detailed description and the claims. In particular, the specification previously used (a)-(d) to reference claim elements (a-1)-(a-4). The present Amendment replaces each (a) with (a-1), each (b) with (a-2), each (c) with (a-3), and each (d) with (a-4) within the specification of the subject application. In addition, claims 1-4 and 10 are currently amended. In particular, claims 1-4 are currently amended to further define that claimed component (a-1), which is a liquid diorganopolysiloxane having at least two alkenyl groups per molecule, has a viscosity at 25 °C not less than 100 mPa·s and not more than 100,000 mPa·s. Support for currently amended claims 1-4 can be found at least in paragraph [0015] of the subject application as published (specifically, U.S. Publ. Pat. Appl. No. 2008/0021125), which states that there are no particular limitations concerning the molecular weight of component (a-1) as long as the component (a-1) is liquid at normal temperatures, and its viscosity at 25 °C is preferably not less than 100 mPa·s and not more than 100,000 mPa·s. Claim 10 is currently amended merely for purposes of proper antecedent basis. As such, no new matter is added via the present Amendment. No claims are cancelled, withdrawn or added in the present Amendment.

Claims 1-4, 7, 10-13, 16 and 19-20 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7, 13-15, 18 and 21 of co-pending Application Serial No. 10/546,746 (the '746 application). The Applicants have submitted a Terminal Disclaimer over the '746 application, thus obviating the double patenting rejection of these claims.

Claims 1-12 and 14-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,332,762 to Maschberger et al. (the '762 patent).

With respect to the rejection of claims 1-12 and 14-20 over the '762 patent, the Examiner contends that the '762 patent discloses a composition for forming an elastomeric silicone foam comprising (A) a blowing agent which comprises aqueous emulsions containing organopolysiloxanes, emulsifiers, water, and thickeners, (B) diorganopolysiloxanes, (C) crosslinking agents, and, if appropriate, (D) crosslinking catalysts and (E) fillers. In addition, the Examiner correlates the diorganopolysiloxane (B) of the '762 patent to claimed component (a-1) of the subject application, and contends that the diorganopolysiloxane (B) of the '762 patent has the following general formula:



where at least two  $R^2$  radicals are alkenyl radicals, preferably vinyl radicals.

While Applicants make no concession as to the propriety of the Examiner's rejections of these claims based upon 35 U.S.C. § 102(b), the Applicants have amended claims 1-4 to render this rejection by the Examiner moot. In particular, currently amended claims 1-4 recite that component (a-1), which is a liquid diorganopolysiloxane having at least two alkenyl groups per molecule, has a viscosity at 25 °C not less than 100 mPa·s and not more than 100,000 mPa·s. Conversely, as set forth in column 5, lines 25-30 of the '762 patent, "m" in the general formula set forth above for the diorganopolysiloxane (B) of the '762 patent, which the Examiner correlates to claimed component (a-1), "is an integer which has a value such that the average viscosity of the diorganopolysiloxanes is from  $1 \times 10^6$  to  $1 \times 10^9$  mPa·s at 25 °C, and more preferably from  $5 \times 10^6$  to  $1 \times 10^8$  mPa·s at 25 °C." Thus, the average viscosity of the

diorganopolysiloxane (B) of the '762 patent is several orders of magnitude larger than the average viscosity of claimed component (a-1) of the subject application. In particular, the lower limit of the average viscosity of the diorganopolysiloxane (B) of the '762 patent is 1,000,000 mPa·s at 25 °C, versus a mere 100 mPa·s at 25 °C for claimed component (a-1). Similarly, the upper limit of the average viscosity of the diorganopolysiloxane (B) of the '762 patent is 1,000,000,000 mPa·s at 25 °C, versus a mere 100,000 mPa·s at 25 °C for claimed component (a-1). Thus, even when the average viscosity of the diorganopolysiloxane (B) of the '762 patent is at its lowest limit, it is still 10 times higher than the average viscosity of claimed component (a-1) at its highest limit.

As the Examiner is aware, to establish anticipation under 35 U.S.C. §102, a reference must teach every element of a claim being rejected. (see MPEP §2131). Because the '761 patent fails to disclose, teach, or even suggest claimed component (a-1), which is a liquid diorganopolysiloxane having at least two alkenyl groups per molecule and a viscosity at 25 °C not less than 100 mPa·s and not more than 100,000 mPa·s, the Applicants respectfully traverse the Examiner's rejections of claims 1-12 and 14-20 under 35 U.S.C. §102.

Moreover, not only does the '762 patent fail to disclose, teach, or even suggest a liquid diorganopolysiloxane having at least two alkenyl groups per molecule and a viscosity at 25 °C not less than 100 mPa·s and not more than 100,000 mPa·s, but the '762 patent fails to disclose a silicone rubber sponge emulsion composition, as claimed in the subject application. Applicants note that the claims of the subject application are directed toward a silicone rubber sponge emulsion composition, or a method of making such a silicone rubber sponge emulsion. Although Applicants appreciate that the '762 patent discloses blowing agent compositions comprising

aqueous emulsions, the term “emulsion” in the context of the ‘762 patent relates only to the blowing agent composition itself, not to the overall composition utilized to form the elastomeric silicone foam. This fact is first evidenced in the Abstract of the ‘762 patent, which states “[b]lowing agent compositions (a) comprising aqueous emulsions containing organopolysiloxanes (1), emulsifiers (2), water (3) and thickeners (4) which may be used in the preparation of elastomeric silicone foams.” Thus, the term “emulsion” describes the blowing agent composition (a). The Abstract of the ‘762 patent goes on to state that “[t]he blowing agent compositions are used in curable compositions to form elastomeric silicone foams which comprise the blowing agent compositions (a), diorganopolysiloxanes (b), crosslinking agents (c) and, if appropriate, crosslinking catalysts (d) and optionally fillers (e).” Thus, the diorganopolysiloxanes (b), crosslinking agents (c), crosslinking catalysts (d) and fillers (e) are separate and distinct components from the blowing agent composition, and the term “emulsion,” which describes the blowing agent compositions (a), is limited to the blowing agent compositions (a) and is not used to describe any other components or the overall composition. Said differently, merely one of several components utilized to form the silicone foams of the ‘762 patent is an emulsion, and the whole composition formed by mixing the individual components, is not an emulsion.

This is further exemplified by a close reading of the Examples of the ‘762 patent. In each of the Examples of the ‘762 patent, the blowing agent (which may itself be an emulsion), is mixed with additional components to form a mixture. The respective mixtures of the ‘762 patent then produce silicone foams. Notably, each of the mixtures in the Examples of the ‘762 patent are mixed by milling, such as on a two-roll rolling mill, such that the mixtures are sheets, and the

mixtures are subsequently extruded. Clearly, if the mixtures are milled, in the form of a sheet, and extruded, the mixtures can in no way be interpreted as emulsions, which are liquids. As known in the art, liquids are not milled; rather, solids and/or gums are milled. Thus, the '762 patent fails to disclose, teach, or otherwise suggest a silicone rubber sponge emulsion composition, as claimed in the subject application, or a method for producing such a silicone rubber sponge emulsion composition.

The Applicants also note that claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the '762 patent in view of U.S. Pat. No. 4,876,806 to Peoples (the '806 patent). However, because this claim depends from claim 11, which incorporates the elements of independent claim 1, this rejection is respectfully traversed in view of the fact the Applicants have overcome the Examiner's rejection of independent claim 1.

In view of the foregoing, the Applicants submit that claims 1-20 are both novel and non-obvious over the prior, including over the '762 and '806 patents, either individually or in combination. As such, the Applicants believe the subject application is in condition for allowance, and such allowance is respectfully requested.

This Amendment is timely filed; thus, it is believed that no additional fees are due. However, if necessary, the Commissioner is authorized to charge Deposit Account 08-2789 in the name of Howard & Howard Attorneys PLLC for any additional fees or to credit the account for any overpayment.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS PLLC**

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